UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,073	01/16/2004	Jong Cheol Choi	2950-0252P	5287

2292	7590	01/09/2008

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EXAMINER
SELLERS, DANIEL R

ART UNIT	PAPER NUMBER
2615	

NOTIFICATION DATE	DELIVERY MODE
01/09/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>17 October 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,2,5-13 and 16-23</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,2,5-13 and 16-23</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>16 January 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
.Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Priority

1.   Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which

papers have been placed of record in the file.

Election/Restrictions

2.   Applicant's election with traverse of Species I in the reply filed on 10/17/2007 is

acknowledged. The traversal is on the ground(s) that there is no serious burden for

search and examination. This is found persuasive because each of the different figures

1 and 4-7 are obvious variants of one another, wherein figure 1 and associated claim 1

is agreed to be a generic claim.

        The requirement is deemed improper.

Oath/Declaration

3.   The oath or declaration is defective. A new oath or declaration in compliance

with 37 CFR 1.67(a) identifying this application by application number and filing date is

required. See MPEP §§ 602.01 and 602.02.

> The oath or declaration is defective because:
> It does not identify the city and either state or foreign country of residence of
> each inventor. The residence information may be provided on either an
> application data sheet or supplemental oath or declaration.

Claim Rejections - 35 USC § 102

4.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   ′ **Claims 1, 2, 5-13, and 16-23** are rejected under 35 U.S.C. 102(b) as being

clearly anticipated by Replay Gain (RG) (http://www.replaygain.org, and its various

linked pages, as retrieved from The Wayback Machine at http://www.archive.org).

6.   Regarding **claim 1**, RG teaches a method for controlling an audio recording

level, comprising the steps of:

> *a) detecting audio data and determining an audio level average of the audio data* (see RG's Calculation page, "2. RMS Energy Calculation",
> (http://web.archive.org/web/20010827010748/privatewww.essex.ac.uk/~djmrob/replaygain/calculating_rg.html), archived on 08/27/2001, and hereinafter calculation page); *and*
> *b) variably controlling an audio level of a song to be recorded later on the basis of the audio level average* (see RG's Outline page, Basic Steps, #4,
> (http://web.archive.org/web/20010827022814/privatewww.essex.ac.uk/~djmrob/replaygain/outline.html), archived on 08/27/2001, and hereinafter outline page).

The introduction page, "Replay Gain - A Proposed Standard",

(http://web.archive.org/web/20011005165428/privatewww.essex.ac.uk/~djmrob/replayg

ain/index.html) (archived on 10/05/2001 and hereinafter introduction page) links to the

contents page by the "Read on to find out more" link,

(http://web.archive.org/web/20011031173847/privatewww.essex.ac.uk/~djmrob/replayg

ain/contents.html) (archived on 10/31/2001 and hereinafter contents page). The

calculation page is linked to "6. Calculating the replay gain" on the contents page, and

the outline page is linked to "4. Outline of the Replay Gain Proposal" on the contents page.

7.   Regarding **claim 2**, see the preceding argument with respect to claim 1, RG teaches a method as set forth in claim 1, wherein

the step (a) determines the audio level average of the decoded audio data by excluding a certain part of the audio data having an audio level outside of a prescribed maximum-minimum reference level (see calculation page, "3. Statistical Processing").

8.   Regarding **claim 5**, see the preceding argument with respect to claim 1, RG teaches a method as set forth in claim 1, further comprising

simultaneously recording the audio data to a recording medium, and (c) recording the variably controlled audio level of the song to the recording medium (see calculation page, "4. Calibration with reference level" and see outline page, "Basic Steps", step 3).

9.   Regarding **claim 6**, see the preceding argument with respect to claim 5, RG teaches a method as set forth in claim 5, wherein

the recording medium is one of the following:
       an optical disk,
       a HDD (hard disk driver) (see introduction page, wherein "The Problem" teaches encoding mp3 files from CD audio files and "The solution" teaches storing a replay gain value in the mp3 metadata),
       a DRAM (dynamic random access memory), and
       a flash memory.

It is inherent that the mp3 files are stored on a HDD or the like.

10.   Regarding **claim 7**, see the preceding argument with respect to claim 1. RG teaches a method for controlling an audio recording level, comprising the steps of:

a) decoding entry audio data to be recorded in song units, and determining an audio, level average of the decoded entry audio data (see calculation page and see RG 's File Format page, "Where to store them?", (http://web.archive.org/web/20010827020146/privatewww.essex.ac.uk/~djmrob/replaygain/file_format.htm l), archived on 08/27/2001, and hereinafter file format page); *and*
b) variably controlling a level of subsequent decoded audio data on the basis of the determined audio level average (see RG 's Player Requirements page, "1. Scale audio to match

Replay Gain",
(http://web.archive.org/web/20010827024445/privatewww.essex.ac.uk/~djmrob/replaygain/player.html),
archived on 08/27/2001, and hereinafter player requirements page).

RG teaches decoding the audio data, wherein different file formats are proposed, such

as MP3 and WAV formats (see calculation and file format pages). It is implicit that one

of these formats is decoded to determine the audio level average.

11.   Regarding **claim 8**, see the preceding argument with respect to claim 7. RG

teaches a method as set forth in claim 7, wherein

> *the step (b) includes the steps of:*
> *b1) calculating an offset value between the detected audio level average and an audio*
> *level average of a firstly recorded song* (see calculation page, "4. Calibration with
> reference level" and RG's Calibration page, "Implementation",
> (http://web.archive.org/web/20020106152700/http://privatewww.essex.ac.uk/~djmrob/replaygain/c
> alibration.html), archived on 01/06/2002, and hereinafter "calibration page");
> *b2) adjusting an audio level of a subsequent song unit on the basis of the offset value*
> (see calculation page, "5. Replay Gain"); *and*
> *b3) encoding and recording the subsequent song unit having the adjusted audio level*
> (see calculation page, "4. Calibration with reference level", wherein the difference
> is stored in the audio file).

12.   Regarding **claim 9**, the further limitation of claim 7, see the preceding argument

with respect to claim 8. RG teaches these features with a previously recorded song.

13.   Regarding **claim 10**, the further limitation of claim 7, see the preceding argument

with respect to claims 6 and 7. RG teaches these features.

14.   Regarding **claim 11**, see the preceding argument with respect to claim 7. RG

teaches a method as set forth in claim 7, wherein

> *the decoded entry audio data is in a first audio format type, and the subsequent decoded audio*
> *data is in a second audio format type, the first and second audio format types different from each other*
> (see introduction, wherein RG teaches a CD audio format and a subsequent MP3 audio
> format with metadata for title, artist, and CD track number).

15.   Regarding **claim 12**, see the preceding argument with respect to claim 1. RG teaches an apparatus with these features, wherein RG teaches a method performed on a personal computer system.

16.   Regarding **claim 13**, the further limitation of claim 12, see the preceding argument with respect to claim 2. RG teaches these features.

17.   Regarding **claim 16**, the further limitation of claim 12, see the preceding argument with respect to claim 5. RG teaches these features.

18.   Regarding **claim 17**, the further limitation of claim 16, see the preceding argument with respect to claim 6. RG teaches these features.

19.   Regarding **claim 18**, see the preceding argument with respect to claim 7. RG teaches an apparatus with these features, wherein RG teaches a method performed on a personal computer system.

20.   Regarding **claim 19**, the further limitation of claim 18, see the preceding argument with respect to claim 8. RG teaches these features.

21.   Regarding **claim 20**, the further limitation of claim 18, see the preceding argument with respect to claim 9. RG teaches these features.

22.   Regarding **claim 21**, the further limitation of claim 18, see the preceding argument with respect to claim 6. RG teaches these features.

23.   Regarding **claim 22**, the further limitation of claim 18, see the preceding argument with respect to claim 11. RG teaches these features.

24.   Regarding **claim 23**, the further limitation of claim 18, see the preceding argument with respect to claim 5. RG teaches these features.

Conclusion

25.   The prior art made of record and not relied upon is considered pertinent to
applicant's disclosure.

Nakano et al., US 5,404,315 A - teaches an automatic gain control device for
adjusting input sound signals to proper values (Column 1, lines 9-17);

Rzeszewski, US 5,666,430 A - calculates a power level and compares it to a
threshold (abstract);

Dougherty, US 5,872,852 A - teaches dynamic compression and automatic gain
adjustment (Column 1, lines 16-22 and Column 10, line 64 - Column 11, line 6); and

Mayer, US 2004/0042103 A1 - teaches automatic volume normalization (¶ 0007).

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-
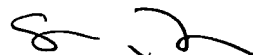7528. The examiner can normally be reached on Monday to Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the
organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SINH TRAN
SUPERVISORY PATENT EXAMINER

DRS